

447 **FILED**
O'Clock P.M.
JUN 28 2011

June 28, 2011
State of Arizona vs. James Arthur Ray
Cause No. V1300CR201080049

SANDRA K MARKHAM, Clerk
~~Rhondi HAGEN~~

FURTHER INSTRUCTIONS TO THE JURY

In the first phase of this trial you have returned a verdict of guilty. Now we are about to begin the second phase of the trial. The State has alleged aggravating circumstances in this case. Under Arizona law, the jury must decide whether the aggravating circumstances exist. The law requires the State to prove these specific aggravating circumstances to you beyond a reasonable doubt. Based on that allegation, we are now beginning an aggravating circumstance hearing.

Before evidence is presented, you must start with the presumption that the alleged aggravating circumstance is not proven. The State must present evidence to prove an aggravating circumstance beyond a reasonable doubt. If you conclude that the State has not met its burden of proof beyond a reasonable doubt, then you must find the alleged aggravating circumstance not proven. The Defendant is not required to testify or produce evidence of any kind. The decision on whether to testify or produce evidence is left to the Defendant, acting with the advice of an attorney. The Defendant's decision not to testify or produce evidence is not evidence of the existence of any aggravating circumstance.

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. You may also rely on the jury instructions that were read and given to you earlier. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence," I mean the testimony of witnesses and exhibits introduced in court during the earlier trial, as well as any testimony or exhibits introduced at the aggravation circumstance hearing. You should not guess about any fact. You must not be

influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel that I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction or part of one and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

The lawyers will again talk to you about the law and the evidence. What the lawyers say is not evidence, but it may help you to understand the law and the evidence.

You must decide whether the State has proven an alleged aggravating circumstance by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment in reaching a decision. Punishment is left to the judge.

You are to determine what the facts in the case are from the evidence produced in court during the trial or the aggravating circumstance hearing. If the Court sustained an objection to a lawyer's question, you must disregard it and any answer given. Any testimony stricken from the court record must not be considered.

Evidence may be direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

In considering the evidence, you must decide whether to believe the witnesses and their testimony. As you do this, you should consider the testimony in light of all the other evidence in the case. This means you may consider such things as the witnesses' ability and opportunity to observe, their manner and memory while testifying, any motive or prejudice they might have, and any inconsistent statements they may have made.

The State has the burden of proving any aggravating circumstance beyond a reasonable doubt. In civil cases, it is only necessary to prove

that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the alleged aggravating circumstance is proven. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the alleged aggravating circumstance is proven, you must find that the alleged aggravating circumstance exists. If, on the other hand, you think there is a real possibility that the alleged aggravating circumstance is not proven, you must give the Defendant the benefit of the doubt and find the alleged aggravating circumstance not proven.

The State has alleged the following aggravating circumstances:

1. The Defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

In order to find this aggravating circumstance, you must find that the State has proven beyond a reasonable doubt that the Defendant's motive, cause or impetus for the commission of negligent homicide was consideration for the receipt or the expectation of receipt of pecuniary value. This finding may be based on tangible evidence and/or strong circumstantial evidence. "Pecuniary value" may be money or property.

You need not find that consideration for the receipt, or the expectation of the receipt, of the pecuniary value was the sole motivation or cause of the negligent homicide in order to find that this circumstance exists. However, the existence of a pecuniary motive at some point during the event surrounding the negligent homicide is not enough to establish this aggravating circumstance. There must be a connection between the motive and the killing. The mere fact that the person was killed, and the Defendant made a financial gain, does not by itself establish this aggravating circumstance.

2. The victim, or if the victim has died as a result of the conduct of the Defendant, the victim's immediate family has suffered emotional harm.
3. The Defendant was in a unique position of trust with each victim.

Each aggravating circumstance is a separate and distinct allegation. You must decide each aggravating circumstance separately on the evidence with the law applicable to it, uninfluenced by your decision on any other aggravating circumstance. You may find that the State has proved beyond a reasonable doubt, all, some, or none of the aggravating circumstances. Your finding for each aggravating circumstance must be stated on the form.

All of you must agree before you may find an aggravating circumstance "proven beyond a reasonable doubt" or "not proven". Your foreman will be in charge during your deliberations and will sign the verdict forms.

You will be given three verdict forms on which to indicate your decisions. They read as follows: